IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 486 of 1995

with

CRIMINAL APPEAL No 518 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PARVATSINH RUPALSINH MUNIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 486 of 1995
Mr. B.K. Dave, for Mrs. Krishna V. Barot,
for the appellant
Mr. A.J. Desai, APP for Respondent No. 1

2. Criminal Appeal No. 518 of 1995
MR KR RAVAL for the appellant
Mr. A.J. Desai, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 01/08/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant-original accused No.1, Parvatsinh Rupalsinh Muniya, and appellant-original accused No.2, Tersing Ravjibhai Zalaiya, have filed Criminal Appeals Nos.486 of 1995 and 518 of 1995, respectively, under Section 374(2) of the Code of Criminal Procedure ('Code' for short), challenging the judgment and order dated April 5, 1995, passed by the learned Sessions Judge, Panchmahals, at Godhra, in Sessions Case No.112 of 1994, whereby, the learned Sessions Judge convicted both the appellants for the offence under Section 302 read with Section 114 of the Indian Penal Code, and sentenced each of them to R.I. for life and imposed a fine of Rs.500 in default R.I. for two months on the accused No.1, and a fine of Rs.200 in default R.I. for one month on the accused No.2. As both the appeals arise out of the same judgment and order dated April 5, 1995, and as common questions of facts and law arise for our consideration, we propose to dispose of both these appeals by this common judgment.

2. The prosecution case is summarized hereinbelow. The appellants and deceased Raijibhai Mansinhbhai were residents of village Vandeli, Taluka Godhra, District Panchamahals. On June 2, 1994, at about 4 p.m. both the appellants had demanded money from deceased Raijibhai Mansinhbhai for purchase and consumption of liquor. When deceased Raijibhai Mansinhbhai refused to part with money, both the appellants had quarreled with him. The accused No.2 caught hold of deceased Raijibhai Mansinhbhai and the accused No.1 gave a blow with a stone weighing 5 Kgs. on the left portion of the chest of the deceased. The deceased Raijibhai Mansinhbhai was, thereafter, dragged to a long distance. It is the prosecution case that the appellants had also given kick and fist blows on the deceased. Since P.W.1, Gulabbhai, who happens to be the nephew of the deceased, had witnessed the incident, he informed one Pratapsinh Zalaiya about the incident. After arrival of Pratapsinh Zalaiya at the place of the incident, First Information Report was lodged at Mora Police Station at C.R. no.I/74 of 1994 for the offences under Sections 302, 114, and

506(1) of the Indian Penal Code. P.W.7, Mahendrasinh Rathod, who was at the relevant time discharging his duties as PSI at Mora Police Station, took over the investigation of the above crime; went to the place of the incident; drew a panchanama of place of incident, and recovered the muddamal stone, with which the fatal blow was given on the chest of the deceased. PSI, Rathod, recorded statements of the witnesses and, on receipt of the post-mortem report, filed the chargesheet against the appellants for the offences under Sections 302, 114, and 506(1) of the Indian Penal Code, in the Court of the Judicial Magistrate, First Class, Santrampur. The said chargesheet was registered as Criminal Case No.1020 of 1994. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned JMFC has committed the case to the Sessions Court, Panchmahals, at Godhra, where, it came to be numbered as Sessions Case No.112 of 1994.

3. Charge Exh.3 was framed against the appellants for the offences under Sections 302, 114, and 506(2) of the Indian Penal Code. The charge was read over and explained to the appellants wherein they pleaded not guilty and claimed to be tried.

4. In order to prove the charge, the prosecution examined (1) P.W.1, Gulabbhai Maganbhai, Exh.9 (complainant), (2) P.W.2, Kiranbhai Mansukhbhai, Exh.15 (eye-witness), (3) P.W.3, Circle Inspector, Ganpatsinh Dasratsinh Solanki, Exh.16, who prepared the map of place of incident; (4) P.W.4, Police Jamadhar, Sardarsinh Jaisinh, Exh.21, who recorded the First Information Report lodged by P.W.1; (5) P.W.5, Dr. Girishkumar Rohit, EXh.22, who performed post-mortem of the dead body of deceased; (6) P.W.6, Vajiben Hirabhai, Exh.26, and (7) P.W.7, IO, PSI, Mahendrasinh Rathod, Exh.27. The prosecution produced documentary evidence such as First Information Report lodged by P.W.1, inquest panchanama, post-mortem notes, panchanama and map of place of incident, etc. to prove the case against the appellants.

5. After recording of the evidence of the prosecution, the learned Sessions Judge questioned the appellants with regard to incriminating evidence found against them, and their statements came to be recorded under Section 313 of the Code. The appellants examined, in their defence, witness No.1, Ghumansinh Manibhai Parmar, who was at the relevant time serving as Talati of village Vandeli, at Exh.32.

6. The learned Sessions Judge, on appreciation of

oral as well as documentary evidence and after hearing the arguments advanced by the learned Additional Public Prosecutor and the learned advocate for the accused persons, held that the prosecution has proved that deceased Raijibhai Mansinhbhai died homicidal death. It was further deduced by the learned Sessions Judge that the appellants by abetting each other had committed murder of deceased Raijibhai Mansinhbhai by inflicting blow with stone weighing about 5 kgs on the left chest portion of the deceased which ultimately resulted into death of the deceased. The learned Sessions Judge, on the basis of the abovereferred conclusion, convicted both the appellants for the offence under Section 302 read with Section 114 of the Indian Penal Code, and sentenced each of them to R.I. for life and imposed a fine of Rs.500 in default R.I. for two months on the accused No.1, and a fine of Rs.200 in default R.I. for one month on the accused No.2, which has given rise to filing of these appeals by the appellants.

7. Learned advocate, Mr. B.K. Dave, who appears for the appellant in Criminal Appeal No. 486 of 1995, and learned advocate Mr. K.R. Raval who appears for the appellant in Criminal Appeal No. 518 of 1995, and learned APP, Mr. A.J. Desai, have taken us through the entire record and proceedings of the appeals.

8. Learned counsel for the appellants have submitted that there was contradictory evidence of the complainant and the so-called eye-witness and the learned Sessions Judge has erred in relying upon the said contradictory evidence in holding that the appellants had caused the murder with the aid of Section 114 of the Indian Penal Code and sentenced them to undergo R.I. for life. In the alternative, it is submitted by the learned counsel for the appellants that the offence of the case would be under Section 325 of the Indian Penal Code and not one under Section 302 of the Indian Penal Code. It is vehemently submitted by the learned counsel for the appellants that there was no common intention on the part of the appellants to cause death of the deceased with the knowledge that the injury, which was inflicted, was likely to cause the death of the deceased. It is, therefore, submitted that the case would fall under Section 304 Part II of the Indian Penal Code, and would not fall under Section 302 of the Indian Penal Code.

9. Learned APP, Mr. A.J.Desai, has vehemently submitted that the conviction recorded and sentence imposed by the learned Sessions Judge is based on correct

appreciation of evidence and is also based on sound principles of law and, therefore, no interference is called for by this Court, and the appeals be dismissed.

10. We have heard learned counsel for the appellants and the learned APP, Mr. A.J. Desai, at length, and have carefully scanned through the evidence led by the prosecution. In our opinion, the evidence led by the prosecution was proved beyond doubt that the appellant of Criminal Appeal No.486 of 1995 (original accused No.1) had inflicted a blow with stone on the left portion of the chest of deceased Raijibhai Mansinhbhai which caused his murder. The appellant of Criminal Appeal No.518 of 1995 had caught hold of deceased Raijibhai Mansinhbhai and had aided and abetted the original accused No.1 in dragging the deceased and had facilitated the accused No.1 for giving blow of stone on the chest of the deceased. Therefore, the conviction of the appellants with the aid of Section 114 of the Indian Penal Code is proved beyond doubt. However, it is required to be stated that the dispute between the appellants and the deceased had taken place in a trivial manner. When the appellants had demanded money for purchase of liquor, and when the deceased had refused to give money, both the appellants had given kick and fist blows to the deceased and the original accused No.2 had caught hold of the deceased whereas the original accused No.1 had inflicted severe blow with stone on the left portion of chest of the deceased. From the evidence led by the prosecution, it can be safely held that there was no intention on the part of the appellants to cause death of the deceased. There is nothing on record to show that the accused intended to cause deliberate murder of the deceased. There is no evidence to show that any of the accused ordered the killing of the deceased or incited or in any way expressed a desire to kill the deceased at the spot. In these circumstances, we are satisfied that there is no legal evidence in this case that the appellants intended to cause the murder of the deceased. The fact, however, remains that the appellants have caused multiple injuries on the accused on various parts of his body and, therefore, the appellants undoubtedly had the knowledge that the cumulative effect of the injuries would result in the death of the deceased. Under the circumstances, we are of the view that the appellants have committed offence under Section 304 Part II of the Indian Penal Code and not one under Section 302 of the Indian Penal Code.

11. As a result of foregoing discussions, both the appeals are partly allowed. The conviction of the

appellants under Section 302 read with Section 114 of the Indian Penal Code is altered to under Section 304 Part II of the Indian Penal Code and their sentence is reduced from life imprisonment to seven years rigorous imprisonment. Accordingly, the appellants are sentenced to undergo R.I. for seven years and each of them to pay a fine of Rs.500 in default S.I. for three months. Since the order of conviction, the appellants are in jail and, therefore, it is ordered that the appellants be set at liberty forthwith if their presence is not required in any other case. The muddamal be destroyed in terms of the judgment and order of the learned Sessions Judge.

(M.H. Kadri, J.)

(Sharad D. Dave, J.)
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